

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

KEVIN PHILLIPS, an individual,

Plaintiff,

vs.

C.R. BARD, INC., a foreign corporation,  
 BARD PERIPHERAL VASCULAR,  
 INC.,

Defendants.

3:12-cv-00344-RCJ-WGC

**INTERIM CASE MANAGEMENT ORDER**

This Interim Case Management Order addresses multiple discovery issues, including the format(s) to be utilized by Defendants C.R. Bard, Inc., and Bard Peripheral Vascular, Inc.,<sup>1</sup> in their production of Electronically Stored Information (ESI), additional fields of metadata for certain ESI documents produced by Bard, the format for production of ESI documents created as Power Point presentations and Excel spread sheets, Bard's databases, identification of custodians and keyword searches. These issues arose following the court's status conference of January 17, 2013 (*see* Minutes at Doc. # 46) conducted on the parties' Joint Case Management Report (Doc. ## 43, 48); and briefing thereon, including, Plaintiff's motions to compel (Doc. ## 50, 56), Defendants' responsive memoranda (Doc. ## 49, 53) and other filings by the parties (Doc. ## 57, 59, 65, and 72.) The decisions by the court as set forth herein follow a hearing on February 22, 2013 (*see* Minutes at Doc. # 68), where the court received arguments of counsel on the aforementioned issues and also received comments, suggestions and recommendations of the parties' ESI consultants, and a hearing on March 1, 2013,

<sup>1</sup> Defendants C.R. Bard, Inc., and Bard Peripheral Vascular, Inc., shall hereinafter be referred to as Bard.

1 where the court received comments and suggestions regarding the contents of this order.

2 Now, with good cause appearing, the court enters its Interim Case Management Order, as  
3 follows:

4 **I. Format of Production**

5 Except for the production of certain documents as set forth herein, Bard's electronically  
6 searchable TIFF format will be an acceptable format of production. Power Point presentations and  
7 Excel spreadsheets shall be produced in "native" format. The court reserves ruling on the required  
8 format for production of databases, if any. With regard to possible production of Bard databases, the  
9 parties are to jointly discuss and explore the feasibility of producing databases, including the possible  
10 production of "IMS Sales database."

11 **II. Additional Fields of Metadata**

12 Based upon comment and representation of the parties' ESI consultants, Bard shall produce  
13 the following additional metadata for all documents produced in TIFF format: Original File Name, File  
14 Path, Create Date, Internal Create Date, and E-mail Receive Date. In respect to reduplicated ESI, Bard  
15 shall provide the file path location for all custodians who had the document.

16 **III. Custodians**

17 Bard will provide Plaintiff a comprehensive list of all custodians from whom ESI has already  
18 been collected by Bard. Bard will further search and produce the custodial files of the twenty (20)  
19 "priority" Bard custodians who were identified by Plaintiff, using the search terms previously utilized.

20 Unless Bard files a timely motion for protective order arguing that these productions would  
21 impose an undue burden on Bard, these productions will be accomplished within **thirty (30) days** of  
22 the date of this order. Bard may seek leave of court to request additional time to accomplish this task.  
23 In addition, Plaintiff may seek leave of court to include additional custodians on a showing of good  
24 cause.

25 **IV. Additional Search Terms/Keyword Searches**

26 Plaintiff sought to have Bard utilize certain additional search terms not previously employed  
27 by Bard. At the February 22, 2013 status conference, the parties' ESI consultants agreed to meet to  
28

1 discuss the reasonable ability of Bard to employ these additional search terms.

2 The court, however, did not specify any deadlines for the ESI consultants to complete their  
3 collaboration, nor did the court enter any deadlines as to when any such additional searches must be  
4 completed. Bard, in its proposed interim case management report (Doc. # 69), stated that after the  
5 parties' consultants meet and confer, and after Bard has applied these new keyword search terms to  
6 the "priority" custodians, it would advise the court of its ability to comply with the new search  
7 requests.

8 While the court appreciates and accepts Bard's representations, the court also adopts more  
9 specific deadlines and protocol as proposed by Plaintiff, as follows:

10 (1) Plaintiff will provide Bard with a list of further search terms within ten days of the date  
11 of this order;

12 (2) Bard will then have ten days to either agree to run the searches, or to explain in writing their  
13 basis for objecting to the individual keyword searches; for those keyword searches not objected to,  
14 Bard will have thirty days from the date of receipt of the search terms to provide responsive  
15 documents, except for documents which contain redactions, in which case Bard will have an additional  
16 fifteen days to provide those redacted documents. For any search that Bard runs, if Bard intends to  
17 withhold any document or portion of a document as privileged or subject to the work product doctrine,  
18 it must provide a corresponding privilege log entry for such document(s) within the thirty day time  
19 frame it has to provide responsive documents.

20 (3) If Bard objects to any designated search terms, the parties will then meet and confer in  
21 good faith to resolve any disputes. If a satisfactory resolution cannot be reached, Plaintiff will move  
22 to compel within 12 days of receipt of the written statement explaining Bard's reasons for refusing to  
23 employ the designated search terms;

24 (4) If supplemental document productions disclose further relevant keywords, Plaintiff may  
25 designate further keyword searches following the above-described protocol.

26 ///

27 ///

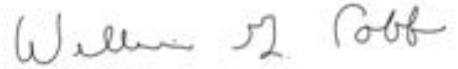
**Discovery Deadline and Trial Date**

The parties are reminded that pursuant to their agreement, the new deadline for completion of fact discovery is **November 15, 2013**. Expert discovery is to be completed on or before **January 14, 2014**. (*See* Doc. # 73.) The parties are further reminded that in granting the parties' requested extensions, the court stated that there shall be no further extensions and the parties should guide themselves accordingly.

Unless any dispositive motions are still outstanding, the trial of this matter is set for **June 3, 2014**, before the Honorable Robert C. Jones, Chief Judge.

**IT IS SO ORDERED.**

**DATED: March 1, 2013.**



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WILLIAM G. COBB  
UNITED STATES MAGISTRATE JUDGE